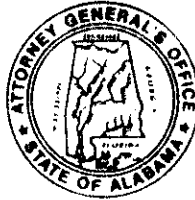


# OFFICE OF THE ATTORNEY GENERAL



80-00097

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NOV 21 1979

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Honorable James A. Christopher  
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Choctaw County-First Judicial  
Circuit-Court Costs-Taxation

Act 79-375, which increases court costs in each case in Choctaw County by \$4.00 to be used for paying salaries of deputy sheriffs is not in conflict with section 12-19-20 Code of Alabama 1975, enumerating exceptions to uniform court fees, and the additional charge is a tax to be collected only once in each case in Choctaw County.

Dear Ms. Brown and Mr. Christopher:

I have your inquiry as follows:

"Act 79-375, Regular Session 1979, provides that court costs and charges on all cases filed in the Choctaw County division of the First Judicial Circuit be increased by \$4.00 and that the money so collected be paid into the Choctaw County General Fund to be used for paying salaries of Choctaw County deputy sheriffs. Section 1 of Act 79-375 reads as follows:

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'Section 1. On the first day of the first month next following the effective date of this Act, all costs and charges of court in the Choctaw County division of the First Judicial Circuit of this state shall be increased by four dollars (\$4.00) with the proceeds from such increase to be paid into the general fund of Choctaw County to be used exclusively for paying the salaries of deputies sheriff in Choctaw County.'

(A copy of this legislation is attached.)

"As you know, Act 1205, Regular Session 1975, now codified in Title 12 of the Code of Alabama 1975, enacted a uniform fee schedule for our court system. More specifically, Section 12-19-20 (a), Code of Alabama 1975, states that court fees in civil and criminal cases in circuit and district courts shall be uniform for each type case and each court level. Subsection (b) of this statute provides that court fees prescribed in Chapter 19 of Title 12 of the Code of Alabama 1975 'shall be exclusive of all other fees' with the exception of certain specifically enumerated charges.

"These enumerated exceptions in Section 12-19-20 (b), Code of Alabama 1975, do not include an additional fee imposed by law for payment of deputy sheriffs' salaries. Therefore, as a conflict between the above quoted portion of Act 79-375, Regular Session 1975, may exist, I submit the following inquiries for your consideration:

"(1) Act 79-375 provides that all costs and charges of court in the Choctaw County division of the First Judicial Circuit be increased by \$4.00. Are the provisions of this local act in conflict with Section 12-19-20, Code of Alabama 1975, and, if so, which prevails?

"(2) If it is determined that Act 79-375 is in conflict

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with Section 12-19-20, Code of Alabama 1975, and further, that said Act 79-375 does not prevail over said Code section, then, in that event, is it required that the four-dollar cost provided for in Act 79-375 be collected by the Office of the Circuit Clerk of Choctaw County and the Office of the Register of Choctaw County?

"(3) If it is determined that Act 79-375 is not in conflict with Section 12-19-20 of the Code, and, therefore, all 'court costs and charges' in the Choctaw County division of the First Judicial Circuit will be increased by \$4.00, is this additional \$4.00 fee to then be added to all court costs and charges including, but not limited to, civil, criminal, and traffic docket fees, defendant service fees, witness subpoena fees, jury demand fees, garnishment, attachment and execution fees?

"Your prompt consideration of these questions will be greatly appreciated."

In my opinion there is no conflict in the provisions of Code of Alabama 1975, Section 12-19-20 and Act 79-375 and both have a field of operation. The amount of four dollars should be collected once in addition to all other costs in each case in Choctaw County and paid into the general fund of Choctaw County to be used for salaries of deputy sheriffs.

While Section 12-19-20, Acts 1975 attempts to make court fees in civil and criminal cases in the circuit and district court uniform by making the court fees prescribed in Chapter 19 (Sections 12-19-1 through 12-19-254 Code of 1975) exclusive, said section itself enumerates exceptions allowing certain fees to be collected and retained in the county collecting such authorized exceptional fees and used as authorized by law. Some of those exceptional fees are those now or hereafter imposed by law on parties to civil actions and criminal defendants for support of law libraries, public defender services, and work and pretrial release programs. Since these charges are

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based on numerous statutes applying to various jurisdictions, obviously the total fees or cost in similar cases may not be uniform in different areas.

While an additional cost or charge of four dollars in cases filed in court in Choctaw County as provided in Act 79-375 is not among the enumerated exceptions to uniformity, as contained in Section 12-19-20, in my opinion, the legislature does not derive its power from, nor is it limited to, the enumerated exceptions in Section 12-19-20 when it enacts a subsequent statute. The 1975 legislature could not so limit the 1979 legislature. Section 12-19-20 is neither a source nor a limitation on legislative authority. Act 79-375, enacted after Section 12-19-20 simply becomes an additional exception to the uniformity provisions of this section by requiring four dollars to be added to total court cost per case in Choctaw County for paying deputy sheriffs.

It is further my view that the charge of four dollars is a tax and not a court cost although it is collected as such. As stated in State v Montevallo Coal Mining Company, 29 Ala. App. 318, 197 So. 82, cert. den. 240 Ala. 73, 197 So. 87 quoting from Cooley on Taxation:

"\*\*\* if the object of the fee is to provide general revenue rather than to compensate the officers, and the amount of the fee has no relation to the value of the services, the fee is a tax."

If this charge is not a court cost, but a tax as Montevallo indicates, then Act 79-375 is not even in conflict with the uniformity provision of Act 79-375. While taxes have increased in Choctaw courts, court fees or costs have not.


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In my opinion, the clause in Act 79-375 stating: "All court costs and charges of court in the Choctaw County division of the First Judicial Circuit of this state shall be increased by four dollars (\$4.00)...." does not have reference to individual items of charges or costs. It is my view that the charge of four dollars is to be added as one increase to all other costs and charges in one or each specific case one time only.

Sincerely,

CHARLES A. GRADDICK  
Attorney General

By-

  
BERNARD F. SYKES  
Assistant Attorney General

BFS: jt